88-959

No. _____

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

ALFREDO RIOS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

1) Has the Court(s) below so far departed from the accepted and usual course of judicial proceedings, and so far sanctioned such a departure by a lower court, as to call for an exercise of the Supreme Court of The United States power of supervision?

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

ALFREDO RIOS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Petition For Writ of Certiorari

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The petitioner, Alfredo Rios, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered July 14, 1988.

OPINION BELOW

The Sixth Circuit Court of Appeals entered its ORDER denying petitioner's petition for rehearing and suggestion for rehearing en banc July 14, 1988. A copy of the ORDER is attached as Appendix A.

The Sixth Circuit Court of Appeals, PER CURIAM affirmed Alfredo Rios jury conviction. Decided and Filed March 18, 1988, by the Sixth Circuit Tribunal. A copy of the decision is attached as Appendix B.

JURISDICTION

On July 14, 1988, the Court of Appeals rendered an ORDER denying petitioner's petition for rehearing and suggestion for rehearing en banc (Cf., Appendix A). The jurisdiction of the Supreme Court of the United States is invoked under Title 28, United States Code, Section 1254-(1). No other petitioner is involved in this petition.

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment V:

> Nor shall any person . . . be deprived of life, liberty, or property, without due process of law.

This clause encompasses equal protection principles.

STATEMENT OF THE CASE

On March 18, 1988, a panel of the Sixth Circuit Court of Appeals affirmed the conviction of Alfredo Rios for one violation of Title 21, United States Code, Section 963, (conspiracy to import cocaine) (Cf., Appendix B). A timely petition for rehearing pursuant to Rule 35 and 40 of the Federal Rules of Appellate Procedure was filed, and the petition was denied on July 14, 1988, by the Sixth Circuit.

On April 11, 1986, an indictment was returned against Alfredo Rios (petitioner) and 23 others by the Grand Jury in the Eastern District of Michigan. Rios was charged in Count 2 of the indictment (only) with conspiring to import cocaine in violation of 21 U.S.C. 963, a copy of the Indictment is attached as Appendix C.

On November 3, 1986, a jury trial commenced before the Honorable Barbara K. Hackett in the Eastern District of Michigan. On November 12, 1986, a mistrial was declared when the jury was unable to reach a verdict.

The second trial commenced on January 6, 1987, and on January 12, 1987, the jury convicted Rios. On March 30, 1987, Judge Hackett sentenced Rios to the custody of the Attorney General for a term of 15 years and further sentenced him to pay a committed fine of $20,000.00, a copy of the JUDGMENT is attached as Appendix D.

REASON FOR GRANTING THE WRIT

Where evidence of a second uncharged conspiracy including otherwise inadmissable hearsay is prejudice toward a defendant and imparts a variance of the indictment and the evidence demands that the judgment be vacated.

In *United States v. Durades*, 607 F.2d 818 (9th Cir. 1979), The Court determined that "a conviction must be reversed if there was a variance between the indictment and proof that affected the substantial rights of the parties."

In *United States v. Warner*, 690 F.2d 545 (6th Cir. 1982) determined "If an indictment alleges one conspiracy, but the evidence can reasonably be construed only as supporting a finding of multiple conspiracies, the resulting variance between the indictment and the proof is reversable error if the appellant can show that he was prejudiced thereby."

The extent to which this holding was upheld by this Court (The Supreme Court of The United States) in the Court's succinct opinion in *Dunn v. United States*, 442 US 100 (1979), is clear. The Fourth Circuit addressing the same issue, at *United States v. Coward*, 630 F.2d 229

(1980), "evidence at trial, which showed unrelated conspiracies between one pharmacist and a local physician and between another pharmacist and the same physician, was a fatal variance from grand jury indictment, which charged a single conspiracy between two pharmacists and the physician."

The Supreme Court drew the parameter of error for such variances in conspiracy cases in *Berger v. United States,* 295 US 78 (1935). In *Kotteakos v. United States,* 328 US 750, (1946), "The Supreme Court held that the allegations of a single conspiracy, but proof of separate conspiracies under the circumstances of that case could, without more, demonstrate prejudice."

Virtually every Federal District Court and virtually every Circuit Court of Appeals has held under circumstances of this instant case warrants vacation of the judgment below. The Sixth Circuit Court of Appeals has held accordingly in a voluminus of cases, and now departs from that usual course.

The disposition "as law and justice require" for petitioner Alfredo Rios is vacation of his conviction and dismissal of the indictment against him.

CONCLUSION

For the foregoing reasons, petitioner Alfredo Rios respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted.

/s/ ALFREDO RIOS
Alfredo Rios, Pro Se
Box 4600, #09051-039
Federal Medical Center
Rochester, Minnesota 55903

CERTIFICATE OF SERVICE

I, Alfredo Rios hereby certify that I have served a copy of the foregoing, first class mail, postage prepaid to:

Solicitor General of the United States
Department of Justice
Washington, D.C. 20503 and all parties required to be served by enclosing three copies this ———— day of ————————————, 1988.

/s/ ALFREDO RIOS
ALFREDO RIOS
Parole Officer
Authorized By The Act of
July 7, 1955,
To Administer Oaths
(18 U.S.C. 4004)
Signature Notarized 11/20/88
Illegible, Case Manager

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APPENDIX A

No. 87-1344

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ALFREDO RIOS,
Defendant-Appellant.

Before: LIVELY, JONES and BOGGS, Circuit Judges

ORDER

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

Filed July 14, 1988.

ENTERED BY ORDER OF THE COURT
/s/ LEONARD GREEN
Leonard Green, Clerk

APPENDIX B

No. 87-1344

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. ALFREDO RIOS, *Defendant-Appellant.*	ON APPEAL from the United States District Court for the Eastern District of Michigan.

Decided and Filed March 18, 1988

Before: LIVELY, Chief Judge; JONES and BOGGS, Circuit Judges.

PER CURIAM. Defendant-appellant, Alfredo Rios, appeals his jury conviction for conspiracy to import cocaine. For the reasons set forth below, we find his arguments to be without merit and, therefore, affirm his conviction.

I.

On April 11, 1986, Alfredo Rios, the defendant, along with twenty-three others, was indicted by a federal grand jury sitting in the United States District Court for the Eastern District of Michigan. Rios was charged only in Count Two of a thirteen count indictment. Count Two alleged a conspiracy

to import cocaine in violation of 21 U.S.C. §§ 952, 960 and 963 (1982). Count Two specifically alleged:

> 1.) That from on or about January, 1981, until on or about December, 31, 1984, in the Eastern District of Michigan and elsewhere, Stephen A. Hagerman, John H. McCann, III, Roberto C. Jaramillo, Michael Canelas, Jose Cruz and Alfredo Rios, defendants herein, did knowingly, willfully and unlawfully combine, conspire, confederate and agree together and with other persons, both known and unknown to the grand jury, to commit an offense or offenses against the United States, that is, to knowingly, intentionally, and unlawfully import into the United States cocaine, a Schedule II Controlled Substance, contrary to Title 21, United States Code, Section 960; all in violation of Section 963, Title 21, United States Code.
>
> 2.) It was part of said conspiracy that Roberto C. Jaramillo would use his position as a Columbia [sic] diplomat to assist Stephen A. Hagerman and John H. McCann, III in taking suitcases and other containers of cocaine through various Customs stations without the suitcases or containers being searched by Customs officials.
>
> 3.) It was further part of said conspiracy that Alfredo Rios, Roberto C. Jaramillo, Michael Canelas, Fernando Canelas and Jose Cruz would either act as sources of supply or introduce Stephen A. Hagerman and John H. McCann, III to sources of supply of cocaine in South America.

J. App. at 8-9.

As a result of various pretrial dispositions, including dis-

missals and guilty pleas, Rios was the only person named in Count Two to stand trial.[1]

On November 3, 1986, Rios's jury trial commenced before the Honorable Barbara K. Hackett. On November 12, 1986, a mistrial was declared when the jury was unable to reach a verdict.

During this trial, various motions were made by the defendant concerning the admission of co-conspirator statements. These statements concerned Rios's involvement in the conspiracy and were allegedly made by co-defendant Stephen Hagerman to John McCann and Michael Canelas, two co-defendants who were testifying for the government pursuant to plea agreements. Judge Hackett received testimony from McCann and Canelas outside the jury's presence. Upon receiving that testimony, she ruled that the government had shown, by a preponderance of the evidence, that a conspiracy existed, that Rios was a member thereof and that the statements in question were made in furtherance of the conspiracy.

Prior to Rios's retrial, both parties stipulated that the testimony and rulings concerning the admissibility of the co-conspirator statements in the first trial would be incorporated into the second trial so as to avoid unnecessary repetition of testimony.

Rios's second trial began on January 6, 1987. At trial, the government once again alleged that Rios had conspired with Stephen Hagerman and others to import cocaine into the United States. Evidence was introduced which indicated that sometime before February 1982, Hagerman became involved in the importation of cocaine from Colombia. This activity allegedly began when John McCann, Hagerman's brother-in-

---

[1]At the time of Rios's trial, Stephen Hagerman was pending extradition from Canada.

law, requested Hagerman's assistance in developing sources for coal in South America. Hagerman agreed to help McCann with his expenses and to accompany him on his trips. McCann later learned that Hagerman intended to import cocaine from South America into the United States.

On their first trip to Colombia in January 1982, Hagerman and McCann brought back into the United States one kilogram of cocaine. Thereafter, Hagerman asked Anthony Peters, a friend, if he could identify anyone who might provide him with a South American "source." Peters stated that he had been dealing cocaine with an individual named Jose Cruz who had a source named Alfredo "Freddy" Rios. Peters agreed to ask Cruz to arrange a meeting between Hagerman, Cruz and Rios for the purpose of introducing Rios to Hagerman as a potential source of South American cocaine. In February 1982, such a meeting occurred in New York.

Testimony provided at trial by Peters and Cruz established that a deal was struck at that meeting whereby Hagerman would go to South America and meet Rios who, in turn, would introduce him to a cocaine source. Cruz was supposed to make the necessary arrangements, but decided, at the last moment, not to take part in the transaction. Thus, Rios failed to meet Hagerman in South America. However, Cruz testified, he subsequently learned that Hagerman had, in fact, been successful in obtaining cocaine from Rios and his sources.

Thereafter, between February 1982 and October 1983, Hagerman and McCann made several trips to Colombia where they brought back varying amounts of cocaine ranging from one to fifty kilograms. Based on several conversations he had with Hagerman, McCann testified that at least five of these trips were arranged by an individual identified as "Freddy." McCann testified that these conversations with Hagerman arose because of his concern for their safety. He stated that he wanted reassurance from Hagerman that the

people with whom they were dealing would not rob or kill them. Hagerman told McCann that he had met Freddy in New York and had been reassured that Freddy and his people would deliver the cocaine without problems. He stated that Freddy was of Puerto Rican extraction and lived in New York. At a later date, Hagerman placed Freddy's phone number in McCann's personal telephone book. At trial, the evidence showed that the New York telephone number listed in McCann's personal book belonged to Estrella Lopez, the common law wife of Alfredo "Freddy" Rios.

McCann also testified that Hagerman told him that he had an arrangement with Freddy's source whereby Hagerman would pay for one-half of the drugs he wanted and take the rest on consignment and that he was also able to take an equal amount of drugs for Freddy or the people whom Freddy was representing. Hagerman told McCann that he had become the middleman between Freddy and Freddy's Colombian suppliers in that the drugs he and McCann picked up in Colombia were taken to Detroit where Freddy and/or his associates would pick up the portion earmarked for them.

In October 1983, Hagerman and McCann obtained another source of cocaine through Michael Canelas in Bolivia. During that month, Hagerman and McCann, with Canelas's assistance, imported approximately eighty kilograms of cocaine into the United States. Hagerman told McCann that Freddy would be receiving some portion of the Bolivian cocaine. Also, at some point after the October 1983 delivery, Hagerman met with Canelas in Michigan and told him he was unable to pay him because Freddy had not yet paid for the drugs and Freddy was *the source* of the money for the portion of cocaine which had to be paid up front on the first Bolivian deal. Hagerman identified Freddy as living in New York and of a Puerto Rican background. Hagerman also told Canelas that Freddy was his best source in the United States as he was good for over 100 kilos of cocaine a month.

In September 1984, Hagerman, McCann and Canelas imported over 100 kilograms of cocaine from Bolivia to Monterrey, Mexico and on into Michigan. During this trip, Hagerman and McCann discovered that they were under investigation. McCann remained in Mexico while Hagerman returned to the United States. Hagerman, however, began to make departure plans.

Telephone records introduced into evidence at trial showed that Hagerman made many phone calls to Rios and vice-versa concerning the Bolivian shipments as well as their other deals. An ongoing relationship between the two was certainly demonstrated by the records introduced and the testimony given.

Prior to the submission of the case to the jury, Rios requested that the court instruct the jury on multiple conspiracies. The court gave the requested instruction to the jury informing them that they might *only* convict Rios if they found him guilty of the conspiracy charged and not some other conspiracy which might have been proven. Rios made no objection to the wording and/or form of the instruction.

On January 9, 1987, the jury began its deliberations. On January 12, 1987, the jury found Rios guilty as charged.

On March 30, 1987, Judge Hackett sentenced Rios to 15 years imprisonment and ordered him to pay a committed fine of $20,000. On the same day, the defendant filed a timely notice of appeal to this court.

II.

Two issues are presented to us by the defendant for appellate review. We review both questions under limited standards. The question of

> [w]hether single or multiple conspiracies have been shown is usually a question of fact to be resolved by the jury under proper instructions and to be con-

> sidered on appeal in the light most favorable to the government. Even if there is a 'variance' in the proofs showing multiple conspiracies rather than a single conspiracy, reversal is required only where substantial rights of the appellants are involved.

United States v. Grunsfeld, 558 F.2d 1231, 1238 (6th Cir.), *cert. denied sub nom. Flowers v. United States*, 434 U.S. 872 (1977) (citations omitted). *See also United States v. Warner*, 690 F.2d 545, 549 (6th Cir. 1982).

This determination, "in the light most favorable to the government," must be made without weighing the evidence or determining witness credibility. *United States v. Conti*, 339 F.2d 10, 13 (6th Cir. 1964). Thus, any argument relating to the credibility of the government's witnesses and the inconsistencies in their testimony is irrelevant to our determination. The fact that the government's witnesses were testifying under plea agreements was made known to the jury. In light of this evidence, the jury found some of their testimony credible. Having so found, it is not our function as a reviewing court to reverse that determination.

The second issue raised by the defendant is whether the lower court erred in admitting hearsay evidence as statements made "in furtherance" of a conspiracy.

> It is well established "that, before the government can take advantage of the coconspirator exception to the hearsay rule, it must show by a preponderance of the evidence (1) that a conspiracy existed, (2) that the defendant against whom the hearsay is offered was a member of the conspiracy and, (3) that the hearsay statement was made in the course and in furtherance of the conspiracy."

United States v. Hamilton, 689 F.2d 1262, 1268 (6th Cir. 1982) (quoting *United States v. Vinson*, 606 F.2d 149, 152 (6th Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980)), *cert.*

denied, 459 U.S. 1117 (1983). We review the district court's admission of certain co-conspirators' statements under an abuse of discretion standard. "This [, of course,] is the standard under which evidential errors of a trial court are tested on appeal." *United States v. Mahar*, 801 F.2d 1477, 1495 (6th Cir. 1986) (citing *Mitroff v. Xomox Corp.*, 797 F.2d 271, 275 (6th Cir. 1986)).

III.

Defendant first argues that the government proved two conspiracies in this case because there were two sources of cocaine, Colombia and Bolivia. He further alleges that he was not involved in the Bolivian conspiracy and that his conspiratorial agreement, if it existed, was only to be a source of the Colombian cocaine. Defendant states that if it is assumed that he was involved in the Bolivian deals, his involvement in that scheme was different than his role in the Colombian importation. These arguments are without merit.

As stated, we review this issue as a question of fact to be resolved by a jury under proper instructions and to be considered on appeal in the light most favorable to the government. *See United States v. Grunsfeld*, 558 F.2d 1231, 1238 (6th Cir.), *cert. denied sub nom. Flowers v. United States*, 434 U.S. 872 (1977). In this case, defendant requested and received a jury instruction concerning multiple conspiracies. The defendant does not allege error in the instruction; indeed, he made no objection to the instruction. Thus, the only question before us is whether or not, in the light most favorable to the government, a single conspiracy was shown.

This court has clearly set forth the applicable law and standards to be used in making this determination. In *United States v. Warner*, 690 F.2d 545 (6th Cir. 1982), this court stated:

> If an indictment alleges one conspiracy, but the evidence can reasonably be construed *only* as support-

> ing a finding of multiple conspiracies, the resulting variance between the indictment and the proof is reversible error if the appellant can show that he was prejudiced thereby. In determining whether the evidence show[s] single or multiple conspiracies, we must bear in mind that the essence of the crime of conspiracy is agreement. "[I] n order to prove a single conspiracy, the government must show that each alleged member agreed to participate in what he knew to be a collective venture directed toward a common goal." However,... a single conspiracy does not become multiple conspiracies simply because each member of the conspiracy did not know every other member, or because each member did not know of or become involved in all of the activities in furtherance of the conspiracy.

Id. at 548-49 (citations omitted) (emphasis added).

This court has also stated that:

> [W] here a conspiracy contemplates a continuity of purpose and a continued performance of acts, it is presumed to exist until there has been an affirmative showing that it has terminated; and its members continue to be conspirators until there has been an affirmative showing that they have withdrawn.

United States v. Hamilton, 689 F.2d 1262, 1268 (6th Cir. 1982), *cert. denied*, 459 U.S. 1117 (1983) (citation omitted).

The Fifth Circuit Court of Appeals has noted that a single conspiracy does not become multiple conspiracies simply because of personnel changes or because its members are cast in different roles, some more vital and more numerous than others. *See United States v. Bates*, 600 F.2d 505, 509 (5th Cir. 1979).

Pursuant to these principles, only one conspiracy was proven by the government in this case—*i.e.*, the conspiracy to import cocaine from South America.

This conspiracy, however, was comprised of several sub-agreements. Rios acted as the "source" for the Colombian importation while Canelas was the "source" for the Bolivian importation. Rios, however, acting as financier, was also involved in the Bolivian importation. Although the role was different, Rios was still a member of a conspiracy with an overall objective of cocaine importation from South America. Indeed, phone records introduced as evidence at trial show that there was an ongoing relationship between Rios and Hagerman well past the Colombian operation and no evidence exists to demonstrate that such a relationship was based upon anything other than a continuing narcotics business.

Therefore, because we conclude that there was no variance between the indictment and the proof presented, the defendant's claims are without merit. The jury was properly instructed, and the defendant made no objection, on single versus multiple conspiracies. It cannot be said that the evidence is such that a reasonable juror could *only* find that multiple conspiracies had been proven. In our view, it is reasonable to assume that Rios's actions were taken pursuant to one plan of importation of cocaine. Therefore, defendant's claims are without factual and legal support.

IV.

Defendant's second argument concerns Judge Hackett's findings made pursuant to *United States v. Vinson*, 606 F.2d 149 (6th Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980), during Rios's first trial. These findings, which admitted certain statements into evidence under Fed. R. Evid. 801(d)(2)(E),[2] were incorporated into Rios's second trial.

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[2]Fed. R. Evid. 801(d)(2)(E) provides:

The following definitions apply under this article:

. . . .

The court held, after hearing testimony from John McCann and Michael Canelas outside the presence of the jury, that a conspiracy existed, that Rios was a member thereof and that the statements to be offered were made during the course of and in furtherance of the conspiracy. Rios claims that the statements were not made in furtherance of the conspiracy.

McCann testified that he became aware of Freddy's role in the conspiracy upon questioning Hagerman about their safety during a Colombian trip. Hagerman told McCann that the people with whom they were dealing were reliable and would not harm them. He told McCann that these people were Freddy's sources and that Freddy had assured him of these facts. Later, McCann testified, Hagerman informed him that Freddy was also involved in the sale of the Bolivian drugs and would take and sell some of the cocaine they brought back.

Canelas testified that he learned of Freddy's involvement in the conspiracy while trying to obtain payment for the first shipment of the Bolivian cocaine. Canelas testified that Hagerman told him the up front money for the cocaine was coming from Rios. Canelas indicated that he would not have continued in the operation if he had not been paid for this shipment. Hagerman also told Canelas that Rios was his best cocaine source in the United States and was good for about 100 kilos a month.

Defendant argues that these statements should not have been introduced into evidence. He alleges that such state-

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(d) **Statements which are not hearsay.** A statement is not hearsay if —

. . . .

(2) **Admission by party-opponent.** The statement is offered against a party and is . . .

(E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

ments were only parts of conversations which did not further the goals of the alleged conspiracy. As such, he argues, they are not admissible as being "in furtherance" of the conspiracy. Defendant, however, takes too narrow a view of this requirement.

Numerous cases have set forth the types of statements which have been found to be "in furtherance" of a conspiracy. Assurances to co-conspirators that one has an outlet for goods have been held to meet the requirement. *United States v. Hamilton*, 689 F.2d 1262, 1270 (6th Cir. 1982), *cert. denied*, 459 U.S. 1117 (1983). Likewise, conversations designed to collect money also fall within the "in furtherance" rule. *Id.* This requirement is satisfied when a co-conspirator is apprised of the progress of the conspiracy or when the statements made are designed to induce his assistance, *United States v. Paone*, 782 F.2d 386, 391 (2d Cir.), *cert. denied*, 107 S. Ct. 269 (1986), as well as when statements are "made to keep a conspirator abreast of a co-conspirator's activities, or to induce continued participation in a conspiracy, or to allay [his] fears. . . ." *United States v. Layton*, 720 F.2d 548, 557 (9th Cir. 1983), *cert. denied*, 465 U.S. 1069 (1984). This court has held that statements designed to gain the trust and assurance of co-conspirators, to provide incentives for negotiations and to peak interest are also in furtherance of a conspiracy. *United States v. McLernon*, 746 F.2d 1098, 1105 (6th Cir. 1984). Finally, statements of one co-conspirator identifying another co-conspirator as a source of narcotics have been held to meet the "in furtherance" requirement. *United States v. Carlson*, 547 F.2d 1346, 136 2 (8th Cir. 1976), *cert. denied*, 431 U.S. 914 (1977).

We conclude that the statements offered by McCann and Canelas clearly fall within these rules. McCann sought assurance from Hagerman that it was safe to continue in the conspiracy. It can be inferred that were it not safe, McCann's activities would have ceased. Furthermore, we interpret Hagerman's statements to McCann about the Bolivian

cocaine, and Rios's involvement therein, as assurances to McCann of an outlet for their goods.

Canelas and Hagerman's conversation arose in the context of an attempt to obtain payment for drugs. These statements clearly fall within the "in furtherance" requirement. Thus, the lower court did not abuse its discretion in admitting the co-conspirator statements as evidence.

Therefore, for all of the foregoing reasons, the appellant's arguments are without merit and his jury conviction is hereby AFFIRMED.

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CRIMINAL NO. 86-80108

VIO: 21 U.S.C. §848, 21 U.S.C. §841, 21 U.S.C. §846, 21 U.S.C. §963, 26 U.S.C. §7201, 18 U.S.C. §371, 18 U.S.C. §2

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STEPHEN A. HAGERMAN, JOHN H. McCANN, III, SALLY B. HAGERMAN, LEAH B. McCANN, ROBERTO C. JARAMILLO, MICHAEL CANELAS, FERNANDO CANELAS, JOSE CRUZ, ALFREDO RIOS, DOUGLAS M. HAGERMAN, ROBERT M. BLINSTRUB, THOMAS F. STRECH, JAMES DORSEY, EDWARD FRENCH, J. D. HANGSTEFFER, RALPH McKEE, DONALD McSORLEY, LARRY MICHAEL, DANIEL STANHOPE, ELAINE A. HAGERMAN, AMY E. HAGERMAN, THOMAS HALSEY, MICHAEL DENNIS, and JAMES JOHNSTON,

Defendants.

Filed Harrisburg, PA, Apr. 18, 1986, Donald R. Berry, Clerk.

INDICTMENT

The Grand Jury Charges:

COUNT ONE

(21 U.S.C. §846 — CONSPIRACY TO POSSESS WITH INTENT TO DISTRIBUTE COCAINE)

That from on or about January, 1981, until on or about the date of this indictment, the exact dates being unknown, in the Eastern District of Michigan and elsewhere, STEPHEN A. HAGERMAN, SALLY B. HAGERMAN, JOHN H. McCANN, II, LEAH B. McCANN, DOUGLAS M. HAGERMAN, ROBERT BLINSTRUB, THOMAS STRECH, JAMES DORSEY, EDWARD FRENCH, J. D. HANGSTEFFER, RALPH McKEE, DONALD McSORLEY, LARRY MICHAEL, and DANIEL STANHOPE, defendants herein, did knowingly, willfully and unlawfully combine, conspire, confederate, and agree together and with others known and unknown to the grand jury, to commit an offense or offenses against the United States, contrary to the provisions of Section 841(a)(1), Title 21, United States Code; all in violation of Section 846, Title 21, United States Code, that is to:

1. Knowingly and intentionally possess with intent to distribute various quantities of cocaine, a Schedule II Controlled Substance; and knowingly and intentionally sell and distribute various quantities of cocaine, a Schedule II Controlled Substance.

2. It was part of said conspiracy that STEPHEN A. HAGERMAN and JOHN H. McCANN, III, would and did procure sources of supply for cocaine in several South American countries, including Colombia and Bolivia.

3. It was a further part of said conspiracy that at various times, STEPHEN A. HAGERMAN and JOHN H. McCANN, III would bring cocaine in kilogram quantities into the United States from South America for distribution in Michigan and elsewhere via several methods, including:

a. Hiding the cocaine in secret compartments in aircraft owned or rented by STEPHEN A. HAGERMAN and/or JOHN H. McCANN, III, which would be flown into the United States from South or Central America.

b. Flying the cocaine from South America to the Bahamas where it would be hidden in fishing boats rented by STEPHEN A. HAGERMAN and/or JOHN H. McCANN, III, and, thereafter, brought into the United States.

c. Flying the cocaine from South America to Mexico, where the cocaine would be hidden in secret compartments built into a pick-up truck which would then be driven into the United States. Defendant RALPH McKEE was one of the individuals who drove the truck from Mexico to the United States.

4. It was a further part of said conspiracy that STEPHEN A. HAGERMAN and JOHN H. McCANN, III created several foreign corporations which were designed to provide a "cover" for their cocaine operation. These corporations included:

1. Estado De Chenta De Diropa S.A., an Ecuadorian company

2. Distraesca, (Ecuavend), an Ecuadorian company

3. Gurpo De Inversiones San Miguiel S.A. (a/k/a Baske Overseas, Inc.), a Panamanian company

4. Groupo Canjagua, a Panamanian company

5. It was a further part of said conspiracy that STEPHEN A. HAGERMAN and JOHN H. McCANN, III used various domestic corporations to assist them in their cocaine operation. These companies included:

1. Eastern Michigan Truck Sales, Inc.
2. Energy Exploration, Inc.
3. Hagerman Enterprise, Inc.
4. Martin & Stephen, Inc.
5. Bear Creek Sports, Ltd.
6. Steve & John, Inc., and
7. American Metalurgical, Inc.

6. It was a further part of said conspiracy that STEPHEN A. HAGERMAN and JOHN H. McCANN, III would and did distribute the cocaine they brought into the United States to several individuals who, in turn, would sell the cocaine and give the money generated by these sales to STEPHEN A. HAGERMAN and/or JOHN H. McCANN, III. These persons included defendants DOUGLAS M. HAGERMAN, ROBERT M. BLINSTRUB, THOMAS F. STRECH, JAMES DORSEY, EDWARD FRENCH, J. D. HANGSTEFFER, LARRY MICHAEL, and DANIEL STANHOPE.

7. It was further part of said conspiracy that SALLY B. HAGERMAN, the wife of STEPHEN A. HAGERMAN, and LEAH B. McCANN, the wife of JOHN H. McCANN, III, would perform various services on behalf of their husband's cocaine operation, including cleaning up cocaine

after it was repackaged, accompanying their husbands to Florida preparatory to their going to South America, and assisting them in those preparations and by assisting in the guarding and transporting of the cocaine obtained by their husbands in South America.

8. It was a further part of said conspiracy that JOHN H. McCANN, III and STEPHEN A. HAGERMAN agreed to be equal partners in their cocaine business.

9. It was a further part of said conspiracy that STEPHEN A. HAGERMAN and JOHN H. McCANN, III procured several pieces of false identification in order to facilitate their flight from the United States in an attempt to avoid prosecution for their involvement in the distribution of cocaine.

COUNT TWO

(21 U.S.C. §963 — CONSPIRACY TO IMPORT COCAINE)

1. That from on or about January, 1981, until on or about December 31, 1984, in the Eastern District of Michigan and elsewhere, STEPHEN A. HAGERMAN, JOHN H. McCANN, III, ROBERTO C. JARAMILLO, MICHAEL CANELAS, FERNANDO CANELAS, JOSE CRUZ and ALFREDO RIOS, defendants herein, did knowingly, willfully and unlawfully combine, conspire, confederate and agree together and with other persons, both known and unknown to the grand jury, to commit an offense or offenses against the United States, that is, to knowingly, intentionally, and unlawfully import into the United States cocaine, a Schedule II Controlled Substance, contrary to Title 21, United States Code, Section 960; all in violation of Section 963, Title 21, United States Code.

2. It was part of said conspiracy that ROBERTO C. JARAMILLO would use his position as a Colombian diplomat to assist STEPHEN A. HAGERMAN and JOHN H. McCANN, III in taking suitcases and other containers of cocaine through various Customs stations without the suitcases or containers being searched by Customs officials.

3. It was a further part of said conspiracy that ALFREDO RIOS, ROBERTO C. JARAMILLO, MICHAEL CANELAS, FERNANDO CANELAS and JOSE CRUZ would either act as sources of supply or introduce STEPHEN A. HAGERMAN and JOHN H. McCANN, III to sources of supply of cocaine in South America.

COUNT THREE

(21 U.S.C. §841(a)(1) — POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE; 18 U.S.C. §2 — AIDING AND ABETTING)

That on or about January, 1983, in the Eastern District of Michigan, Southern Division, STEPHEN A. HAGERMAN and JOHN H. McCANN, III, defendants herein, did knowingly, intentionally, and unlawfully possess with intent to distribute and aid and abet each other in the possession with intent to distribute cocaine, a Schedule II Controlled Substance; in violation of Section 841(a)(1), Title 21, United States Code.

COUNT FOUR

(21 U.S.C. 841(a)(1) — POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE; 18 U.S.C. §2 — AIDING AND ABETTING)

That on or about March, 1983, in the Eastern District of Michigan, Southern Division, STEPHEN A. HAGERMAN

and JOHN H. McCANN, III, defendants herein, did knowingly, intentionally, and unlawfully possess with intent to distribute and aid and abet each other in the possession with intent to distribute cocaine, a Schedule II Controlled Substance; in violation of Section 841(a)(1), Title 21, United States Code.

COUNT FIVE

(21 U.S.C. §841(a)(1) — POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE; 18 U.S.C. §2 — AIDING AND ABETTING)

That on or about June, 1983, in the Eastern District of Michigan, Southern Division, STEPHEN A. HAGERMAN and JOHN H. McCANN, III, defendants herein, did knowingly, intentionally, and unlawfully possess with intent to distribute and aid and abet each other in the possession with intent to distribute cocaine, a Schedule II Controlled Substance; in violation of Section 841(a)(1), Title 21, United States Code.

COUNT SIX

(21 U.S.C. 841(a)(1) — POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE; 18 U.S.C. §2 — AIDING AND ABETTING)

That on or about October to November, 1983, in the Eastern District of Michigan, Southern Division, STEPHEN A. HAGERMAN and JOHN H. McCANN, III, defendants herein, did knowingly, intentionally, and unlawfully possess with intent to distribute and aid and abet each other in the possession with intent to distribute cocaine, a Schedule II Controlled Substance; in violation of Section 841(a)(1), Title 21, United States Code.

COUNT SEVEN

(21 U.S.C. §841(a)(1) — POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE; 18 U.S.C. §2 — AIDING AND ABETTING)

That on or about September, 1984, in the Eastern District of Michigan, Southern Division, STEPHEN A. HAGERMAN and JOHN H. McCANN, III, defendants herein, did knowingly, intentionally, and unlawfully possess with intent to distribute and aid and abet each other in the possession with intent to distribute cocaine, a Schedule II Controlled Substance; in violation of Section 841(a)(1), Title 21, United States Code.

COUNT EIGHT

(21 U.S.C. §848 — ENGAGING IN A CONTINUING CRIMINAL ENTERPRISE)

That from on or about January 1, 1981, and continuing thereafter up to and including December 31, 1984, in the Eastern District of Michigan, Southern Division, and elsewhere, STEPHEN A. HAGERMAN and JOHN H. McCANN, III, defendants herein, did unlawfully, willfully, intentionally, and knowingly engage in a continuing criminal enterprise, and that they unlawfully, willfully, intentionally, and knowingly did violate Title 21, United States Code, Sections 841(a)(1), 846, 960, and 963 on three or more occasions, including but not limited to those acts alleged in Counts One through Seven of this Indictment, which Counts are incorporated in full herein by reference, which violations were part of continuing series of violations of sub-chapters I and II of the Drug Abuse Control Act of 1979 (Pub. L. 91-513, Title II, Section 101 *et seq.*, October

27, 1979, 84 Stat. 1242, 21 U.S.C. 801 *et seq.*) undertaken by the defendants, STEPHEN A. HAGERMAN and JOHN H. McCANN, III, in concert with at least five other persons with respect to whom the defendants, STEPHEN A. HAGERMAN and JOHN H. McCANN, III, occupied a position of organizer, supervisor, or manager, and from which continuing series of violations the defendants, STEPHEN A. HAGERMAN and JOHN H. McCANN, III, obtained substantial income and resources; in violation of Section 848, Title 21, United States Code.

As a result of their engagement in the aforesaid continuing criminal enterprise, the defendants STEPHEN A. HAGERMAN and JOHN H. McCANN, III, obtained profits and property. STEPHEN A. HAGERMAN and JOHN H. McCANN, III shall forfeit to the United States, pursuant to Section 841(a)(2) under Title 21, United States Code, all profits obtained by them arising from the participation in such enterprise and any of their interests in, claims against, property or contractual rights of any kind affording a source of influence over said enterprise. These assets are further described as follows:

1. Proceeds due STEPHEN HAGERMAN or his assignees from the sale of 5516 Westwood Lane, Birmingham. Michigan. Said proceeds total $22,879.41, plus interest, and are currently contained in Account #0627-89124-5 at the Comerica Bank.

2. 1983 Audi, 2-door, VIN WAUBB0856DA117565.

3. 1983 Audi, 2-door, VIN WAUDC0854DA900566.

4. Correct Craft (ski boat), Ski Nautique 2001.

5. One 1983 Reconstructed Motor Vehicle which is a 1947 Jaguar Replica, VIN: SK6751 PA, Title No: A3528-1100, registered to Ruth McCann.

6. $3,000 in currency seized from 4951 Elmgate, Orchard Lake, Michigan, on December 7, 1984.

7. $67,166 due to JOHN McCANN or his assignees from the sale of 124 South Drive, Pittsburgh, PA.

8. Proceeds from the sale of Smokehouse Sally's Restaurant, Petoskey, Michigan due to STEPHEN HAGERMAN.

9. Proceeds from the sale of 4951 Elmgate, Orchard Lake, Michigan to to STEPHEN HAGERMAN.

10. Nine slot machines identified as follows:

a. Bally, M/N 988, Serial #2-195;
b. Bally, M/N 988, Serial #169;
c. Seeburg 3, Serial #11848;
d. Seeburg 3, Serial #12321;
e. Seeburg 3, Serial #12409;
f. Seeburg 3, Serial #12500;
g. Bally JPO 812E, Serial #TL7806;
h. 847, Serial #6MT586;
i. 847, Serial #6MT591

11. Boxes of slot machine slugs.

12. 1982 Chevrolet pick-up truck, VIN #1GCEC24-H9CF367456.

13. All bank accounts of STEPHEN A. HAGERMAN, SALLY B. HAGERMAN, JOHN H. McCANN, III, and LEAH B. McCANN, in any foreign countries. These countries include but are not limited to: Panama, Switzerland, Canada, Colombia, Ecuador, and Mexico.

14. Certain real property described as: Unit #28, Alta Lake Road, Whistler, British Columbia, Canada, also known as: Resort Municipality of Whistler Strata Lot 28, District Lots 3361 and 3556 Strata Plan Vr. 905, together with an interest in the common property in proportion to the Unit entitlement of the Strata Lot as shown on Form 1.

15. 1985 Volvo 740 Turbo Wagon, VIN #YVIFX-8755F1002927;

16. 1984 Audi Quattro, VIN #WAUDC855EA901047;

17. 1985 Audi, VIN #WAUHC0448FN057014;

18. Sony stereo equipment: two pair Bose 201 #116930, one Sony KV1370R #801145, Bose 101 #115728, Sony Strux 350 #7010872, Sony TC FX 310 #703938;

19. Any interest or shares of stock held by STEPHEN A. and/or SALLY B. HAGERMAN in Megasound Planning, Inc.

20. Any currency, cash, precious metals, coins, jewelry, furs, automobiles, boats, airplanes, contents of safe deposit boxes, stocks, bonds, securities and real property, wherever located, held by or on behalf of STEPHEN A. HAGERMAN, SALLY B. HAGERMAN, JOHN H. McCANN, III, and/or LEAH B. McCANN.

All in violation of Section 848, Title 21, United States Code, and Section 2, Title 18, United States Code.

COUNT NINE

(26 U.S.C. §7201 — INCOME TAX EVASION)

That on or about the 8th day of March, 1982, in the Eastern District of Michigan, STEPHEN A. HAGERMAN

and SALLY B. HAGERMAN, who during the calendar year 1981 were married, did willfully attempt to evade and defeat a large part of the income tax due and owing by them to the United States of America for the calendar year 1981, by preparing and causing to be prepared, and by signing and causing to be signed, a false and fraudulent joint United States Individual Income Tax Return, Form 1040, on behalf of themselves, which was filed with the Internal Revenue Service, wherein it was stated that their joint taxable income for said calendar year was the sum of $4,120.00, and that the amount of tax due and owing thereon was the sum of $-0-, whereas, as they then and there well knew and believed, their joint taxable income for the said calendar year was the sum of $138,233.78, upon which said joint taxable income there was owing to the United States of America an income tax of $65,897.61.

In violation of Title 26, United States Code, Section 7201.

COUNT TEN

(26 U.S.C. §7201 — INCOME TAX EVASION)

That on or about the 27th day of March, 1983, in the Eastern District of Michigan, STEPHEN A. HAGERMAN and SALLY B. HAGERMAN, who during the calendar year 1982 were married, did willfully attempt to evade and defeat a large part of the income tax due and owing by them to the United States of America for the calendar year 1982, by preparing and causing to be prepared, and by signing and causing to be signed, a false and fraudulent joint United States Individual Income Tax Return, Form 1040, on behalf of themselves, which was filed with the Internal Revenue Service, wherein it was stated that their

joint taxable income for said calendar year was the sum of $15,347.00, and that the amount of tax due and owing thereon was the sum of $1,100.00, whereas, as they then and there well knew and believed, their joint taxable income for the said calendar year was the sum of $120,679.00, upon which said joint taxable income there was owing to the United States of America an income tax of $47,234.00.

In violation of Title 26, United States Code, Section 7201.

COUNT ELEVEN

(26 U.S.C. §7201 — INCOME TAX EVASION)

That on or about the 15th day of April, 1984, in the Eastern District of Michigan, STEPHEN A. HAGERMAN and SALLY B. HAGERMAN, who during the calendar year 1983 were married, did willfully attempt to evade and defeat a large part of the income tax due and owing by them to the United States of America for the calendar year 1983, by preparing and causing to be prepared, and by signing and causing to be signed, a false and fraudulent joint United States Individual Income Tax Return, Form 1040, on behalf of themselves, which was filed with the Internal Revenue Service, wherein it was stated that their joint taxable income for said calendar year was the sum of $101,752.00, and that the amount of tax due and owing thereon was the sum of $14,205.00, whereas, as they then and there well knew and believed, their joint taxable income for the said calendar year was the sum of $655,700.85, upon which said joint taxable income there was owing to the United States of America an income tax of $308,327.42.

In violation of Title 26, United States Code, Section 7201.

COUNT TWELVE

(18 U.S.C. §371 — CONSPIRACY TO DEFRAUD THE UNITED STATES)

That on or about January, 1982, the exact date being unknown to the Grand Jury, and continuously thereafter up to and including February, 1986, in the Eastern District of Michigan and elsewhere, STEPHEN A. HAGERMAN, SALLY B. HAGERMAN, JOHN H. McCANN, III, LEAH B. McCANN, ELAINE A. HAGERMAN, AMY E. HAGERMAN, DOUGLAS M. HAGERMAN, MICHAEL D. DENNIS, THOMAS F. STRECH, ROBERT M. BLINSTRUB, THOMAS R. HALSEY, and JAMES JOHNSTON, defendants herein, and other persons known and unknown to the Grand Jury, did unlawfully, knowingly and willfully conspire, combine, confederate and agree together and with each other to defraud the United States of America in the exercise of its lawful governmental function by:

1. Impeding, impairing, obstructing and defeating the lawful functions of the Internal Revenue Service of the Treasury Department of the United States in the ascertainment, computation, assessment, and collection of the revenue, to wit: the individual income taxes of STEPHEN A. and SALLY B. HAGERMAN, JOHN H. and LEAH B. McCANN, III, and

2. Impeding, impairing, obstructing and defeating the lawful governmental functions of the United States Department of Justice and United States Department of the Treasury, agencies of the United States, in the proper enforcement and implementation of the property forfeiture provisions of

Title 21, United States Code, Sections 848 and 881(a)(1) and Title 31, United States Code, Section 5317(b).

That the said unlawful combination, conspiracy, confederation and agreement was to be accomplished by the means and method in the manner following:

1. That on or about the date of the commencement of the conspiracy, JOHN H. McCANN, III and STEPHEN A. HAGERMAN, directed, controlled and operated an organization whose primary purpose was the distribution of cocaine in the State of Michigan, the State of Pennsylvania, and surrounding areas.

2. That during the period of this conspiracy, SALLY B. HAGERMAN, LEAH B. McCANN, DOUGLAS M. HAGERMAN, THOMAS F. STRECH, and ROBERT M. BLINSTRUB, did affirmatively and knowingly become involved in said organization's distribution and sale of cocaine.

3. That as a result of the operation of this organization by JOHN H. McCANN, III and STEPHEN A. HAGERMAN, together with the efforts of: SALLY B. HAGERMAN, LEAH B. McCANN, DOUGLAS M. HAGERMAN, THOMAS F. STRECH, ROBERT M. BLINSTRUB, and others, large sums of currency were received by these individuals, said currency having resulted from the sale of cocaine.

4. That as a result of the receipt of this currency, JOHN H. McCANN, III, STEPHEN A. HAGERMAN, LEAH B. McCANN and SALLY B. HAGERMAN used such money to purchase assets (both real and personal).

5. That during the course of this conspiracy, ELAINE A. HAGERMAN, AMY E. HAGERMAN, DOUGLAS M. HAGERMAN, ROBERT M. BLINSTRUB, and THOMAS R. HALSEY, were used by JOHN H. McCANN, III, STEPHEN A. HAGERMAN, LEAH B. McCANN, and SALLY B. HAGERMAN to aid and assist in the acquisition of such assets which were acquired with monies derived from the sale of cocaine.

6. That as a result of ELAINE A. HAGERMAN, AMY E. HAGERMAN, DOUGLAS M. HAGERMAN, ROBERT M. BLINSTRUB, and THOMAS R. HALSEYs' involvement in aiding and assisting in such asset acquisition, ELAINE A. HAGERMAN, AMY E. HAGERMAN, DOUGLAS M. HAGERMAN, ROBERT M. BLINSTRUB, and THOMAS R. HALSEY, received monies derived by JOHN H. McCANN, III, STEPHEN A. HAGERMAN, SALLY B. HAGERMAN, and LEAH B. McCANN from the sale of cocaine.

7. That STEPHEN A. HAGERMAN, SALLY B. HAGERMAN, JOHN H. McCANN, III, LEAH B. McCANN, ELAINE A. HAGERMAN, AMY E. HAGERMAN, DOUGLAS M. HAGERMAN, ROBERT M. BLINSTRUB, and THOMAS R. HALSEY, used such monies in purchasing assets in a manner as to disguise the source and owner of said monies.

8. That during the course of the conspiracy the defendants, MICHAEL D. DENNIS, THOMAS F. STRECH, and ROBERT M. BLINSTRUB, did knowingly and willfully made statements to agents of the Internal Revenue Service of the Department of the Treasury wherein they attempted to disguise and conceal the use of the aforesaid

monies by STEPHEN HAGERMAN in the acquisition of certain assets.

9. It was a further part of said conspiracy that shortly before September, 1984, when STEPHEN A. and SALLY B. HAGERMAN and JOHN H. McCANN, III and LEAH B. McCANN fled from the United States to avoid prosecution, and, thereafter, ELAINE A. HAGERMAN, THOMAS HALSEY, ROBERT M. BLINSTRUB, and JAMES JOHNSTON assisted in concealing or selling certain assets of STEPHEN A. HAGERMAN in order to prevent those assets from being seized by Federal agents, pursuant to Internal Revenue, Customs and/or Controlled Substance statutes and regulations.

10. That knowing the above, defendants STEPHEN A. HAGERMAN, SALLY B. HAGERMAN, JOHN H. McCANN, III, LEAH B. McCANN, ELAINE A. HAGERMAN, AMY E. HAGERMAN, DOUGLAS M. HAGERMAN, MICHAEL D. DENNIS, THOMAS F. STRECH, ROBERT M. BLINSTRUB, THOMAS R. HALSEY, and JAMES JOHNSTON, did unlawfully agree to conceal and disguise the true nature of the transactions evidencing the acquisition of assets acquired through the use of currency which STEPHEN A. HAGERMAN, SALLY B. HAGERMAN, JOHN H. McCANN, III and LEAH B. McCANN generated as a direct result of the sale of cocaine, which asset acquisition if not concealed or disguised would have shown to the Internal Revenue Service the amounts of taxable income attributable to JOHN H. McCANN, III and LEAH B. McCANN and STEPHEN A. HAGERMAN and SALLY B. HAGERMAN and would prevent the discovery by any Federal agency of the true source of activity which

produced such currency and/or would prevent the proper agencies of the United States from seizing said assets, pursuant to the forfeiture statutes.

OVERT ACTS

In furtherance of the said conspiracy and to effect the objects thereof, the following overt acts were done and performed by the defendants and other persons known and unknown to the Grand Jury:

1. That commencing on or about January, 1982, JOHN H. McCANN, III and STEPHEN A. HAGERMAN promoted Energy Exploration Company, Inc. and International Charter Service, Inc., as United States based corporations that were financing a variety of business ventures in Central and South America.

That on or about January, 1982, JOHN H. McCANN, III, LEAH B. McCANN, STEPHEN A. HAGERMAN and SALLY B. HAGERMAN commenced to secure false and fraudulent passports and other fictitious identification.

3. That commencing on or about January, 1982, JOHN H. McCANN, III, on numerous occasions, purchased on the same day, at different financial institutions and with currency, cashier's checks, bank drafts and money orders that totalled in excess of $10,000.

4. That commencing on or about February, 1982, JOHN H. McCANN, III and STEPHEN A. HAGERMAN caused to be leased, chartered, and/or purchased, six jet aircraft in the name of Energy Exploration Company, Inc., a Pennsylvania corporation organized by LEAH B. McCANN in 1980.

5. That on or about March 8, 1982, a false and fraudulent 1981 income tax return (Form 1040) was filed with the Internal Revenue Service by STEPHEN A. and SALLY B. HAGERMAN.

6. That on or about October, 1982, MICHAEL DENNIS borrowed $29,500 in currency from STEPHEN A. HAGERMAN.

7. That on or about January, 1983, STEPHEN A. HAGERMAN purchased a 1983 Porsche automobile and had it titled in the name of ELAINE HAGERMAN.

8. That on or about February, 1983, JOHN H. McCANN, III and LEAH B. McCANN manufactured a false and fraudulent "Sales Agreement" showing stock of Advanced Energy Dynamics was transferred to satisfy a $105,000 loan.

9. That on or about February, 1983, STEPHEN A. HAGERMAN caused to be purchased cashier's check #B21131123 from the Standard Federal Savings Bank in the amount of $25,000. Aforesaid cashier's check was purchased in the following manner: $8,500 in currency and two cashier's checks, one for $8,100 and one in the amount of $8,400.

10. That on or about February, 1983, STEPHEN A. HAGERMAN caused to be purchased cashier's check #99281 from the Fidelity Bank of Michigan in the amount of $25,000. Aforesaid cashier's check was purchased in the following manner: $8,000 in currency and two cashier's checks, one for $8,300 and one in the amount of $8,700.

11. That commencing on or about February, 1983, STEPHEN A. HAGERMAN, SALLY B. HAGERMAN,

AMY E. HAGERMAN and THOMAS STRECH, defendants herein, caused currency to be delivered to Anthony Peters.

12. That on or about March, 1983, STEPHEN A. HAGERMAN lent monies to ROBERT M. BLINSTRUB in the name of ELAINE HAGERMAN.

13. That on or about March 27, 1983, a false and fraudulent 1982 income tax return (Form 1040) was filed with the Internal Revenue Service by STEPHEN A. and SALLY B. HAGERMAN.

14. That commencing on or about April, 1983, to on or about September, 1984, JOHN H. McCANN, III and STEPHEN A. HAGERMAN caused at least two Ecuadorian corporations, Estado De Chenta De Diropa, S.A. (a/k/a "Diropo") and Distraesca (a/k/a "Ecuavend), to be formed.

15. That commencing on or about April, 1983, to on or about September, 1984, JOHN H. McCANN, III and STEPHEN A. HAGERMAN caused at least two Panamanian corporations, Gurpo De Inversiones San Miguiel, S.A. (a/k/a "Basky Overseas, Inc.") and Groupo Canajayua, to be formed.

16. That on or about April, 1983, STEPHEN A. HAGERMAN caused to be purchased a bank "Certificate of Deposit" in the amount of $15,000 in the name of ELAINE HAGERMAN.

17. That commencing on or about April, 1983, to on or about September, 1984, JOHN H. McCANN, III and STEPHEN A. HAGERMAN caused at least two bank

accounts to be opened at the Banco Del Pacifico in Guayaquil, Ecuador.

18. That commencing on or about April, 1983, to on or about September, 1984, JOHN H. McCANN, III and STEPHEN A. HAGERMAN caused at least two bank accounts to be opened at the Banco Continental De Panama.

19. That on or about April, 1983, a 1937 Jaguar Replica automobile was purchased by JOHN H. McCANN, III for $7,995 in currency and titled to Rita McCANN.

20. That commencing on or about May, 1983, THOMAS STRECH caused the installation of at least four safes.

21. That on or about May, 1983, STEPHEN A. HAGERMAN caused to be purchased a bank "Certificate of Deposit" in the amount of $5,000 in the name of ELAINE HAGERMAN.

22. That on or about June, 1983, cashier's check #01506 from the Comerica Bank in the amount of $8,500 was purchased with currency and made payable to "Eastern Michigan Truck Sales."

23. That on or about June, 1983, cashier's check #5184884 from the National Bank of Detroit in the amount of $7,500 was purchased with currency and made payable to "Eastern Michigan Truck Sales."

24. That on or about June, 1983, STEPHEN A. HAGERMAN purchased a 1983 Ski Nautique watercraft in the name of DOUGLAS HAGERMAN.

25. That on or about June, 1983, JOHN H. McCANN, III and LEAH B. McCANN created an "Option Agreement"

where JOHN H. McCANN, III and LEAH B. McCANN could repurchase stock of a company called Advanced Energy Dynamics for $50,000.

26. That on or about July, 1983, JOHN H. McCANN, III and STEPHEN A. HAGERMAN purchased a Seneca airplane, number N6054H, in the name of "Eastern Michigan Truck Sales, Inc.", a Michigan corporation organized by ROBERT M. BLINSTRUB.

27. That on or about July/August, 1983, a false and fraudulent 1982 income tax return (Form 1040) was filed with the Internal Revenue Service by JOHN H. and LEAH B. McCANN, III.

28. That on or about September, 1983, STEPHEN A. HAGERMAN caused to be purchased cashier's check #300706 from the Michigan National Bank — N. Metro in the amount of $25,000. Aforesaid cashier's check was purchased in the following manner: $7,800 in currency and two cashier's checks, one for $8,500 and one in the amount of $8,700.

29. That on or about September, 1983, STEPHEN A. HAGERMAN caused to be purchased cashier's check #294158 from the Michigan National Bank — N. Metro in the amount of $26,850. Aforesaid cashier's check was purchased in the following manner: $8,000 in currency and three cashier's checks, one for $7,850, one for $5,000 and one in the amount of $6,000.

30. That on or about September, 1983, THOMAS HALSEY deposited $27,578 in the form of currency into Account #044106706 of the Michigan National Bank of Detroit. Aforesaid account is that of Hagerman's Warehouse Sports.

31. That on or about September, 1983, JOHN H. McCANN, III attempted to cause Robert Bleier to enter into a false and fraudulent scheme to assist in evading McCANN's income tax.

32. That on or about September, 1983, JOHN H. McCANN, III and STEPHEN A. HAGERMAN caused a check to be drawn on the Banco Continental De Panama account of Basky Overseas, Inc. in the amount of $17,000.

33. That on or about October, 1983, STEPHEN A. HAGERMAN caused to be purchased two watches in the name of ROBERT BLINSTRUB with the use of six cashier's checks.

34. That on or about October, 1983, JOHN H. McCANN, III and STEPHEN A. HAGERMAN caused the purchase of a 1982 Chevrolet pick-up truck by "Eastern Michigan Truck Sales", a Michigan corporation organized by ROBERT M. BLINSTRUB in 1982.

35. That on or about October, 1983, SALLY B. HAGERMAN deposited $63,306 in the form of currency into Account #044106706 of the Michigan National Bank of Detroit. Aforesaid account is that of Hagerman's Warehouse Sports.

36. That on or about November, 1983, JOHN H. McCANN, III and STEPHEN A. HAGERMAN caused Josephine Chavarria to draw a check in the amount of $8,500 on the Banco Continental De Panama account of Grupa Canajagua.

37. That on or about January, 1984, JOHN H. McCANN, III and STEPHEN A. HAGERMAN caused a

check to be drawn on the Banco Continental De Panama of Gurpo De Inversiones San Miguel, S.A. in the amount of $60,000.

38. That on or about February, 1984, JOHN H. McCANN, III and STEPHEN A. HAGERMAN caused Josefina Chavarria to wire transfer $22,888.50 from the Banco Continental De Panama account of Grupo Conajagua to the United States account of I. G. Enterprises, Inc.

39. That on or about February, 1984, JOHN H. McCANN, III and STEPHEN A. HAGERMAN caused to be leased a jet aircraft in the name of International Charter Service, Inc., a Pennsylvania Corporation organized by LEAH B. McCANN in 1980.

40. That on or about April 15, 1984, a false and fraudulent 1983 income tax return (Form 1040) was filed with the Internal Revenue Service by STEPHEN A. and SALLY B. HAGERMAN.

41. That on or about August 15, 1984, a false and fraudulent 1983 income tax return (Form 1040) was filed with the Internal Revenue Service by JOHN H. and LEAH B. McCANN, III

42. That on or about May 30, 1984, a false and fraudulent 1983 U.S. Corporation Income Tax Return for Energy Exploration Company, Inc. (Form 1120) was filed with the Internal Revenue Service by JOHN H. McCANN, III.

43. That on or about March, 1984, JOHN H. McCANN, III caused a false and fraudulent 1983 U.S. Corporation Income Tax Return for International Charter Services, Inc. (Form 1120) to be prepared.

44. That on or about September, 1984, STEPHEN A. HAGERMAN sold a 1984 Porsche automobile.

45. That on or about November, 1984, ELAINE A. HAGERMAN withdrew two bank "Certificates of Deposit" from the Michigan National Bank — North Metro.

46. That on or about July, 1984, JAMES JOHNSTON deposited $25,000 in currency into his business bank account number.

47. That on or about April, 1985, JOHN H. McCANN, III and LEAH B. McCANN willfully and knowingly failed to file a U.S. Individual Income Tax Return (Form 1040) with the Internal Revenue Service when their taxable income was at least $291,481.92.

48. That on or about March, 1985, ELAINE A. HAGERMAN sold a 1983 Audi automobile to Michael Canelas.

COUNT THIRTEEN

(18 U.S.C. §371 — CONSPIRACY TO COMMIT OFFENSE AGAINST THE UNITED STATES)

That on or about January 1, 1982, until on or about December 31, 1984, in the Eastern District of Michigan and elsewhere, STEPHEN A. HAGERMAN and JOHN H. McCANN, III, defendants herein, did willfully, knowingly, and unlawfully combine, conspire, confederate, and agree together and with each other and with diverse other persons known and unknown to the grand jury to commit an offense against the United States, to wit: to violate Title 31, United States Code, Section 1059 in that they agreed to knowingly fail to report, or to file reports with the Secretary of the Treasury or the United States Customs Service as required

by Title 31, United States Code, Sections 1101(a), and Code of Federal Regulations, Sections 103.23(a) and 103.25(b) concerning the transportation of monetary instruments in excess of $5,000 out of or into the United States, in that STEPHEN A. HAGERMAN and JOHN H. McCANN, III did agree to transport or cause to be transported sums of money substantially in excess of $5,000 in currency on any one occasion from the United States to various nations in Central and South America and/or from those nations into the United States, in furtherance of the commission of other violations of federal laws, that is the importation of cocaine in violation of Title 21, United States Code, Section 952(a).

In furtherance of said conspiracy and to effect the objectives thereof, the following overt acts were committed in the Eastern District of Michigan and elsewhere:

1. In January, 1982, STEPHEN A. HAGERMAN and JOHN H. McCANN, III travelled to Bogota, Colombia.

2. In February, 1982, STEPHEN A. HAGERMAN and JOHN H. McCANN, III travelled to Bogota, Colombia.

3. In July, 1982, STEPHEN A. HAGERMAN and JOHN H. McCANN, III travelled to Bogota, Colombia.

4. In August, 1982, STEPHEN A. HAGERMAN and JOHN H. McCANN, III travelled to Bogota, Colombia.

5. In January, 1983, STEPHEN A. HAGERMAN and JOHN H. McCANN, III travelled to Guayaquil, Ecuador and Bogota, Colombia.

6. In March, 1983, STEPHEN A. HAGERMAN and JOHN H. McCANN, III travelled to Guayaquil, Ecuador and Bogota, Colombia.

7. In June, 1983, STEPHEN A. HAGERMAN and JOHN H. McCANN, III travelled to Bogota, Colombia.

8. In October, 1983, STEPHEN A. HAGERMAN and JOHN H. McCANN, III travelled to Guayaquil, Ecuador, Cochabamba, Bolivia, and Monterrey, Mexico.

9. In April, 1984, JOHN H. McCANN, III requested that Patricia Maquilon carry $19,000 in currency from the United States to Ecuador.

10. In September, 1984, STEPHEN A. HAGERMAN and JOHN H. McCANN, III travelled to Monterrey, Mexico, Ecuador, and Bolivia.

All in violation of Title 18, United States Code, Section 371.

THIS IS A TRUE BILL.

_____

FOREPERSON

ROY C. HAYES
United States Attorney
MICHAEL C. LEIBSON (P24092)
Assistant United States Attorney
Dated: _____

United States of America vs.

United States District Court for

EASTERN DISTRICT OF MICHIGAN

DEFENDANT: ALFREDO RIOS

DOCKET NO. 86-80108-09

JUDGMENT AND PROBATION/COMMITMENT ORDER AO 245 (9/82)

COUNSEL

In the presence of the attorney for the government, the defendant appeared in person on this date → MONTH: MARCH DAY: 30 YEAR: 1987

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[XX] WITH COUNSEL KENNETH SASSE, JOSEPH STONE
(Name of Counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged / [X] GUILTY.

Defendant has been convicted as charged of the offense(s) of:

CONSPIRACY TO IMPORT COCAINE
21 U.S.C. 963
COUNT II

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Fifteen (15) years.

Defendant is further ordered to pay a committed fine of $20,000.00.

A $50.00 special assessment is imposed.

SPECIAL CONDITIONS OF PROBATION

Bond cancelled.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON
THIS DATE 3-30-87
By _____ ( ) CLERK ( ) DEPUTY

SIGNED BY
[X] U.S. District Judge
[ ] U.S. Magistrate

BARBARA K. HACKETT

Date

CENTRAL FILE